FOR PUBLICATION

UNITED STATES DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**APPELLATE DIVISION**
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| IN THE MATTER OF THE APPLICATION OF THE DEPARTMENT OF HUMAN SERVICES FOR THE TEMPORARY CARE, CUSTODY AND CONTROL OF: | **D.C. Civ. App. No. 91-159** |
| JAYSON BARRETT, GLENDITA BARRETT, KELVIN STUART, BRYANT STUART, GERALD STUART AND CRAIG STUART, Minors. | **Fam. No. C22/87 & C4/89** |

On Appeal from the Territorial Court
of the Virgin Islands, Family Division

Argued: October 7, 1992
Filed: January 31, 1995

**BEFORE:** **THOMAS K. MOORE**, Chief Judge, District Court of the Virgin Islands; **EDWARD N. CAHN**, Chief Judge of the United States District Court for the Eastern District of Pennsylvania, Sitting by Designation; and **HENRY C. SMOCK**,[1] Judge of the Territorial Court of the Virgin Islands, Sitting by Designation.

**APPEARANCES:**

Todd H. Newman, Esq.
Nichols, Newman & Silverlight
1131 King Street, Suite 204
Christiansted, St. Croix
U.S.V.I. 00820-4970
*Attorney for Appellant*

Robert W. Bornholt, Esq., Asst. Atty. General
V.I. Department of Justice
8050 Kronprindsens Gade

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1. Although Judge Smock participated in the argument and decision of this appeal, he departed the Territorial Court bench before this opinion was handed down. The Revised Organic Act of 1954 § 23A(b), 48 U.S.C § 1613a (1976 & 1986 Supp.), *reprinted in* V.I. CODE ANN., Historical Documents, 61 (1967 and 1994 Supp.)("Revised Organic Act").

Suite #1
St. Thomas, U.S.V.I. 00802
*Attorney for Appellee*

Lucia A. Galiber-Babb, Esq.
2151 East Street
P.O. Box 3042
Christiansted, St. Croix
U.S.V.I. 00822
*Guardian Ad Litem*

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**OPINION OF THE COURT**

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Joan Stuart ("Mrs. Stuart" or "appellant") appeals the Territorial Court's decision to terminate her parental rights due to abuse and neglect of her children. This Court has jurisdiction to consider the matter pursuant to V.I. CODE ANN. tit. 4, § 33 (Supp. 1994). Mrs. Stuart asks this court to reverse her loss of parental rights and declare unconstitutional the termination statute, 5 V.I.C. § 2250.

Mrs. Stuart argues that her substantive due process rights were violated because the statute does not require the showing of a sufficiently compelling interest to warrant severance of the parent-child relationship. She further asserts that the statute is unconstitutionally vague and that she received insufficient notice of the termination proceeding. She also claims that the legislature did not intend to apply the termination statute to

mentally ill people, thus making termination improper in her case. Finally, Mrs. Stuart argues that the court's ruling is not supported by the requisite clear and convincing evidence.

Because we conclude that the statute passes constitutional muster, that it was properly applied to this case, and that there was sufficient evidence to support the court's decision to terminate Mrs. Stuart's parental rights, we affirm the decision of the Territorial Court.

**FACTUAL BACKGROUND**

Mrs. Stuart has six children, all of whom have been in custody of the Department of Human Services ("DHS" or "the Department" and sometimes "Government") since either October 7, 1987 or November 29, 1988.[2]
The eldest, Jayson Barrett, was born physically disabled in 1972, though proper therapy appears to have improved his ability to walk with leg braces. He and his two brothers were born in St. Kitts, British West Indies -- Kelvin Stuart in 1977 and Bryant Stuart 1978. Thereafter, the family moved to St. Croix, and Mrs. Stuart gave birth in 1982 and 1986 to Gerald and Craig Stuart,

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2. Much of the information included in this factual background is taken from reports of various agencies found in the Court file. While the record does not make clear whether these documents were admitted formally into evidence, we have assumed that this information is properly before the Court.

respectively, before the death of their father, Bernard Stuart, in June of 1987. The youngest, Glendita Barrett, was born in 1988. Her father, Ricardo Rivera, died early in 1988.

The Department became involved with the family in June, 1987, upon suspicion that the children had been abused or neglected.[3] At that time, Jayson's legs needed surgery, and the family was living in a fly-infested house with no running water, dangerous electrical wiring, and only a bed and mattress as furniture. It was reported that Mrs. Stuart did not prepare food for the children, nor did she ensure their cleanliness. Request for Petition for Emergency Custody, October 20, 1987. The Department moved the family to a new residence in August, 1987, but the DHS worker reported that during a September visit, she found the home without food, except for flour, sugar and rice scattered in the cabinets, and the bathroom was "unsightly and had a stale odor." *Id.* The DHS worker "instructed Mrs. Stuart to accomplish specific duties which included separating the clothes and washing those that were soiled, cleaning the kitchen and washing the dirty dishes. Mrs. Stuart was also advised not to leave the children . . . unsupervised." *Id.*

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3. It is unclear whether this was the Department's first involvement with the family.

On October 7, 1987, the caseworker arrived at the home to find four of the children alone. The house was in complete disarray with dirty clothes strewn everywhere. The downstairs was flooded with water, in which one child stood barefoot. Another child was completely unclothed. *Id.* There were feces smeared on one mattress and the floor, and garbage was strewn about the front and back yards. The mother returned home exhibiting bizarre and dangerous behavior, including waving a broken glass bottle and trying to force one of her children to eat spoiled cake. *Id.* She was eventually hospitalized and DHS took the children into protective custody (with the exception of Glendita, who was not yet born), and all except Jayson were placed in Queen Louise Home for Children. Because Jayson was older than the maximum age for children at Queen Louise Home, DHS placed him with a foster family.

The children and mother received appointed counsel, and the trial court determined on December 21, 1987, that the children should remain in the custody of DHS. In April, 1988, the court ordered the Department to provide homemaking and mental health counselling to Mrs. Stuart while the children remained in placement. Having noted some improvement in April, the trial judge decided in July, 1988 to allow one child to return to the home at the same time that Mrs. Stuart was to give birth to her

sixth child, Glendita. *See* Appendix for Appellant ("App.") at 17-18 (Order dated July 22, 1988). In addition, the court allowed "frequent and liberal visitation" with continued monitoring of Mrs. Stuart's home, and ordered parenting skills classes "as deemed necessary by the Department of Human Services." *Id.* Mrs. Stuart was able to attend and apparently enjoyed such parenting classes, but DHS cancelled them due to staffing problems and did not arrange for her transportation when the classes resumed in a different location. App. at 53-54 (Transcript for March 21, 1991 Hearing).

The Department returned Craig to live with his mother on October 14, 1988, with plans to return Kelvin in January. On November 29, 1988, however, Mrs. Stuart was again admitted to a psychiatric ward after a worker reportedly found her pushing Craig's head under water in the bathroom washbasin. Progress Report of Lutheran Soc. Servs., January 4, 1990. DHS sent Craig and Glendita to Queen Louise Home where they have resided ever since. Reports from Queen Louise Home show that in 1989, Mrs. Stuart visited the home an average of once a month, mostly to see Bryant, staying anywhere from one minute to two and a quarter hours. She would sometimes bring clothes or money for Bryant, and her behavior varied from calm conversation to dragging the children about, repeatedly asking the same questions, and taking

small objects that belonged to the institution. Queen Louise Home Progress Report, August 1989.

Mrs. Stuart was hospitalized again in June of 1990. Her visits to the children that year were even more infrequent than in 1989. Records from the home show that she made only six visits to her children in 1990, staying for a total of four hours and fifteen minutes for all the visits combined. Lutheran Soc. Servs. Progress Rep. Jan. 20, 1991. Having visited her children for only 35 minutes in the course of seven months, Mrs. Stuart scheduled a supervised visit with her children for December 20, 1990, which the DHS worker reported as especially troubling. Mrs. Stuart apparently arrived with her present male companion, who, the worker reported, reeked of alcohol. Addendum, Family Custody Nos. C22/87 and C4/89, Feb. 22, 1991. Mrs. Stuart looked very angry. As soon as everyone sat down and introductions were made, Mrs. Stuart immediately asked the children if they wanted to come back home and live with her. When Kelvin responded that he was not sure, the male companion yelled at him and Mrs. Stuart accused the worker of "brain washing" the children and turning them against her. Glendita reportedly cried through the entire 15 minute visit. *Id.*

On January 10, 1991, the Department petitioned to terminate the parental rights of Mrs. Stuart. App. at 25-26 (Petition for

Termination of Parental Rights dated January 10, 1991) ("Petition"). The petition cited her several hospitalizations and noted that the Department had been unsuccessful in its attempts to insure that the children would not be subject to further abuse and neglect if returned home. At trial on March 21, 1991, appellant moved to dismiss the petition, but the Territorial Court denied this motion. The Department presented testimony from Ada-Luz Rivera, the DHS worker assigned to the case since 1988, Sylvia Gaskil, the Department's homemaker, and Dr. Francis Delmas, the psychiatrist who had treated Mrs. Stuart. Appellant also took the stand.

Rivera described the unsanitary and dangerous conditions in which she often found the home during their weekly to biweekly meetings, her attempts to provide mental health, homemaking and parenting skills services to Mrs. Stuart, and the details of some visits with the children. She described Mrs. Stuart's behavior as "very unusual" and at times "incoherent." When asked her opinion about whether Mrs. Stuart could care for her children, Rivera testified,

> since working with her, there has been minimal change in her ability to care for herself and at that time when she had her children, the ability to care for them in a proper manner as far as providing supervision and providing the proper medical care and providing the proper education for them. . . . She has the caring spirit of a mother. However, during the counseling sessions

> when I've been with her, she doesn't seem to grasp what it is really to take care of kids. What it entails is more than just giving them something to eat at breakfast and getting them ready to go to school.

App. at 45. Rivera testified that despite some accomplishments in helping Mrs. Stuart improve her parenting and functioning, Mrs. Stuart's relapses of incompetence and extreme dependence on others have made her unable to care for her children.

The court also heard testimony from Gaskil, whom DHS had assigned to help Mrs. Stuart with her housekeeping skills. She reported that despite her visits of two or three times per week, Mrs. Stuart made little progress in her ability to keep a house fit or safe to live in. She described, "[Mrs. Stuart] wouldn't clean unless you tell her to . . . you have to get behind her and say, 'Let's clean.'" App. at 68. Mrs. Stuart did not appear to have showered except when Gaskil told her to do so, and Gaskil believed Mrs. Stuart was unable to cook at all. Gaskil reported that, while Mrs. Stuart was more alert when properly medicated, she was no better at caring for her house. When asked if more frequent services might prove helpful, Gaskil opined that they might help, but also noted that Mrs. Stuart was sometimes not at the house for the appointments they had scheduled.

Dr. Delmas, a psychiatrist, testified about the diagnoses doctors have given Mrs. Stuart over the years following various

crises, which have included depression, schizophrenic mental retardation, inadequate personality, and post-partum psychosis. Delmas reported that "[s]tress ha[s] always resulted in this disintegration of her personality. . . . As someone who functioned at her best when she was really dependent [she] could be very dependent on someone who would organize her and pickup after her." App. at 80. He was not at all optimistic about her ability to care for her children because of her dependent personality. "I wish I knew a way how to transform[] [her] to someone who could take care of these kids . . . . Professionally speaking, I don't know of a way in which someone whose personality I have formulated as I have and who has visibly failed, can do it or can be made to do it." *Id.* at 82.

Mrs. Stuart gave testimony that showed that she cares about her children and would like to have them back, especially if her mother, who lives in St. Kitts, could help her. She also revealed that she enjoyed the parenting classes and other services from DHS and would attend classes again if they were offered. She understood and responded to all the questions asked of her, and described being able to shop for groceries and cook soup.

Based upon the foregoing testimony and the record of prior proceedings, the Territorial Court terminated Mrs. Stuart's parental rights and this appeal followed.

**STANDARDS OF REVIEW**

On questions of law, this Appellate Division exercises plenary review. Findings of fact are reviewed under a "clearly erroneous" standard. In analyzing V.I. CODE ANN. tit. 5, § 2250, we act as the highest arbiter of local law in the Territory. Since there may be some confusion about our function within the separate, insular judicial system of the Virgin Islands, we articulate that role in some detail.

Decisions of the United States Supreme Court have long required federal courts to give great deference to decisions of insular courts of appeals, such as this Appellate Division, on matters of local law. The Supreme Court has rejected any concern that giving such deference to the Appellate Division's understanding of matters of local concern might result in the establishment of local, Territorial law which differ from the body of federal law developed through appeals from the federal, trial side of this District Court -- this is the way our federal system is supposed to work:

> It is not any the less the duty of the federal courts in cases pending in the federal district court or on appeal from

> it to defer to that understanding, when it has found expression in the judicial pronouncements of the insular courts, *Waialua Agricultural Co. v. Christian,* 305 U.S. 91, 109 (1938). Once understood what deference is to be paid, the problem is comparable to that presented when, upon appeals from federal district courts sitting in the states, the federal appellate courts are required to follow state law under the rule of *Erie R. Co. v. Tompkins,* 304 U.S. 64.

*De Castro v. Board of Commissioners,* 322 U.S. 451, 459 (1994) (some citations omitted). The standard of deference to be so accorded this Appellate Division, our Territorial court of appeals, is that its decisions on matters of Territorial law can be reversed only if there is "manifest error" or the interpretation is "inescapably wrong."[4] *Id.* at 458; *see, e.g.,*

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4. A 1984 decision of the Third Circuit Court of Appeals to the contrary is not inconsistent with this proposition since the premise for its conclusion has since been removed by Congress. *See Saludes v. Ramos,* 744 F.2d 992 (3d Cir. 1984). While recognizing these Supreme Court decisions, the *Saludes* court nevertheless refused to accord such deference to the local courts of the Virgin Islands on the distinction that there was then no separate, insular judicial system in this Territory. *Id.* at 993-94. This is no longer the case since the 1984 amendments to the 1954 Organic Act, *see infra* p. 13. With the 1984 amendments in place, it behooves the federal courts consistently to follow the lead of the Congress and allow the insular judicial system of the Virgin Islands the independence and freedom to develop its own precedent, a process the Third Circuit has recently begun in *Matter of Alison,* 837 F.2d 619, 622 (3d Cir. 1988)(discussed more fully in the text, *infra* p.13).

The Ninth Circuit has long defered to the Appellate Division of the District Court of Guam, which operates under a virtually identical mandate from Congress. *See, e.g., Electrical Constr. & Maintenance Co. v. Maeda Pacific Corp.,* 764 F.2d 619, 620 (9th Cir. 1985)("We must affirm a decision of the Appellate Division [of the District Court of Guam] 'on a matter of local law, custom or policy if the decision is based upon a tenable theory and is

(continued...)

*Waialua Agricultural Co. v. Christian,* 305 U.S. 91, 109 (1938) ("[T]erritorial courts should declare the law of the territories with the least possible interference. . . . Unless there is clear departure from ordinary principles, the preference of a federal court [of appeals] as to the correct rule of general or local law should not be imposed upon [the Territory].").[5]

In 1984, Congress specifically amended the Revised Organic Act of 1954 extend the principles of federalism to the judicial system of this Territory. The amendments to section 23 require the relations between the district court, in its capacity as a federal trial court, and the courts created and exercising jurisdiction under Virgin Islands law to "be governed by the laws of the United States pertaining to the relations between the courts of the United States . . . and the courts of the several States" in all matters and proceedings, including appeals. 48 U.S.C. § 1613. Section 23A made it clear that the Appellate Division of the District Court shall have appellate powers over all matters of local law as prescribed by the Legislature of the

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(...continued)
not inescapably wrong or manifest error.'").

5. *Accord United States and Government of the Virgin Islands v. Bruney*, V.I. BBS 93CR035.DT1, n.20 (D.V.I. Oct. 12, 1994) (originating in the federal Trial Division of this Court and noting that statutory construction and interpretation of the Appellate Division should be final unless illegal or manifestly wrong).

Virgin Islands. 48 U.S.C. § 1613a. The Third Circuit recently has begun the process of acknowledging this role of the Appellate Division. *Matter of Alison,* 837 F.2d 619 (3d Cir. 1988). In that case, the court held that it lacked appellate jurisdiction over an order of the Appellate Division reversing and remanding a "final" judgment of the Territorial Court for further proceedings. This holding was supported by the court's construction of "the scheme of appellate review enacted by Congress" via the 1984 amendments:

> The overall congressional intention discernible in [these amendments] is encouragement of the development of a local Virgin Islands appellate structure with greater autonomy with respect to issues of Virgin Islands law . . . . The Appellate Division . . . represents a step in that direction, rather than toward the creation of a territorial federal appellate court with a place and role analogous to the place and role of the courts of appeals in the Article III court structure.

*Id.* at 622. The Appellate Division should thus be viewed as an intermediate Virgin Islands court of appeals whose decisions on matters of local, Territorial law should be upheld unless based on "manifest error" or an interpretation which is "inescapably wrong."

With this preamble, we turn our attention to the issues presented in this case.

**SUBSTANTIVE DUE PROCESS**

**A. The Standard**

The United States Supreme Court has recognized that natural parents have a fundamental liberty interest in the care, custody and management of their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). This interest, the Court has said,

> does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.

*Id.* Because a parent's right to maintain, cultivate and mold an ongoing relationship with her child is fundamental, courts must evaluate with strict scrutiny any statute seeking to interfere with such interests. *Roe v. Conn*, 417 F. Supp. 769, 779 (M.D. Ala. 1976) (citing *Roe v. Wade*, 410 U.S. 113, 155 (1973)). In accordance with the Supreme Court's traditional formulation of the substantive due process standard, a court may not sever parental rights without the government's showing that it has a compelling interest and the statute is narrowly tailored to achieve that objective.[6] *See Carey v. Population Services Int'l*,

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6. The Revised Organic Act § 3 is the basis for applying substantive due process in the Virgin Islands. 48 U.S.C. § 1561.

431 U.S. 678, 686 (1977); *Roe v. Wade*, 410 U.S. at 155; *Franz v. United States*, 707 F.2d 582, 602 (1983).

**B. The Statute**

Under 5 V.I.C. § 2550, the statute governing termination of parental rights,

> (b) The Family Division of the court shall terminate parental rights when it finds by clear and convincing evidence that a child has been removed from his home pursuant to section 2549 of this title, and has remained in an out-of-home placement for six months or more and that during that time the Department of Social Welfare[7] has made continuous diligent, but unsuccessful efforts to reasonably insure that the child will not be subject to further abuse and neglect if returned home and the parent has not made a good-faith and diligent effort at rehabilitation.

Section 2549 governs disposition of abused or neglected children. It provides in pertinent part:

> (b) If a child is found to be abused or neglected, the court may make any of the following orders of disposition:
> (1) permit the child to remain with his parents, guardian or other person responsible for the child's care, subject to such conditions as the court may prescribe; or
> (2) place the child under protective supervision as per section 2551 of this title; or
> (3) make the child the subject of an order of protection as per section 2552 of this title; or

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7. All statutory references to the Department of Social Welfare refer and apply to the Department of Human Services pursuant to a legislative Act of June 24, 1987.

> (4) transfer legal custody to any of the following:
>
> (A) a relative or other individual who, after study of the Department of Social Welfare is found by the court to be qualified and willing to receive and care for the child; or
>
> (B) a public or private agency responsible for the care of abused or neglected children.

In summary, this statutory framework empowers the Department to seek termination of a parent's rights after it has: (1) removed an abused or neglected child from the home for more than six months; (2) made diligent but unsuccessful efforts to make the home a safe place for the child; and (3) the parent has failed to make a good faith effort to improve the situation. Once the court removes a child from the custody of its parents, the judge may choose from a range of placement options, including the homes of family members or other interested individuals, a public agency, or private agency.

### C. The Government's Interest In Creating Permanence For Children Is Compelling

Having identified a fundamental right at stake, this Court must determine whether the Government has a compelling interest in terminating parental rights. While the Government's brief does not articulate its interest, the Court can glean the Legislature's intent from the statute itself.

The Legislature of the Virgin Islands has worded its statute clearly to promote speedy resolution and establishment of a new permanent home for a child when it becomes clear that the biological parent cannot sufficiently provide for the child's needs. By allowing termination to occur as soon as six months after placement when it appears that the parent will not make the necessary improvements to create a safe home, the Legislature has made a clear statement that it does not want children languishing in temporary care. In its policy statement entitled "A Children's Policy for the Territory," the Legislature explicitly has articulated these goals:

> When children must be placed in care away from their homes, the territory shall attempt to ensure that they are protected against harmful effects resulting from the temporary or permanent inability of parents to provide care and protection of their children. It is the policy of this territory to reunite children with their families in a timely manner, whether or not the child has been voluntarily placed in the care of a department. When children must be permanently removed from their homes, they shall if practicable be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, they shall be placed in other permanent settings.

5 V.I.C. § 2501(e). The clear intent of the Legislature is to give children the opportunity to foster new bonds with parental

figures in the most permanent environment possible once it is clear that their biological parents cannot fulfill that role.

As *parens patriae*, the state has a responsibility to protect the safety and welfare of children. *See Santosky v. Kramer*, 455 U.S. at 766. The Supreme Court has recognized, "[i]t is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'" *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)). Providing children with a nurturing and permanent environment which gives them a sense of stability is important for a child's healthy growth. We find the Territory's interest in ensuring the availability of this environment to be compelling.

**D. The Statute Is Narrowly Tailored To Achieve Stability And Permanence For Children.**

With this interest in stability, continuity, and permanence in mind, we proceed to determine if the Legislature could have designed a more narrowly tailored statute. "[I]f there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'" *Dunn v. Blumstein*, 405 U.S.

330, 343 (1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). Appellant argues that the statute must require the Government to investigate whether a relative could provide care for the child before it seeks such a severe alternative as permanent termination of parental rights. However, the Court finds that sufficient reasons exist for not mandating investigation into care by relatives.

Child welfare workers devise various ways to create relative permanence for a child who must be removed from his biological parents' care, such as foster care and institutional environments, but few options create the sense of stability a child needs to develop emotionally. The continuing potential for change of placements thus poisons the feelings of permanence a child may have in any out-of-home placement. A stable, continuing relationship with a "psychological parent" is important for a child. "[E]very child requires continuity of care, an unbroken relationship with at least one adult who is and wants to be directly responsible for his daily needs." JOSEPH GOLDSTEIN, ET AL. BEYOND THE BEST INTEREST OF THE CHILD 40 (2d ed. 1979).

Thus, even if the Government utilizes them on a long-term basis, temporary placement options may not provide the sense of permanence a child needs for healthy development. The Virgin Islands Legislature sought to ensure that all children who cannot

return to the homes of their biological parents because of concern for their safety would have another opportunity for permanence. 5 V.I.C. § 2501. Only termination of parental rights and subsequent adoption can provide true finality in a child's placement outside the biological parent's home. *See* 16 V.I.C. § 146.[8] In all other placement situations, the caretaker could decide that he no longer wants the responsibility of caring for the child, and return her to DHS at will.[9]

There is further logic in the Legislature's choice not to mandate that placement with a family member take precedence over other options. Placement with a relative, temporary or permanent, may be influenced too heavily by the parent who

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8. The Court makes these observations with the realization that adoptions occasionally do break down, despite the careful inquiries that agencies make before allowing an adoption. For a discussion of the problems and issues surrounding annulment of adoptions, see Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L.Q. 257 (Fall 1992).

9. Other courts have agreed that termination is the only way to provide true permanence for a child. *See, e.g. In Re: Adoption/Guardianship No. 10941*, 1994 Md. LEXIS 75, at *33 (June 7, 1994) (overturning trial court's decision to leave the child placed with relatives without terminating mother's rights); *In re Joyce T.*, 478 N.E.2d 1306, 1314 (N.Y. 1985) ("In connection with parental termination, in this State, foster care is viewed as a temporary way station to adoption or return to the natural parents, not the purposeful objective for a permanent way of life.").

endangered the child at the outset.[10] Until a parent's rights are terminated, even if the court has transferred legal custody, the parent retains the power to make decisions that continue to affect the child, such as the child's religious affiliation. 5 V.I.C. § 2502(19) and (27). Where a biological parent clearly is not able to provide the proper care and nurturing for a child, forcing the child's caretaker to share decisionmaking responsibilities provides the opportunity for much mischief.

Furthermore, termination of parental rights does not preclude placement with a competent and available relative. The statute specifically provides for placement with a relative as an option after the child has been removed from the home. *See* 5 V.I.C. § 2549(b)(4)(A). After termination, a relative may seek to adopt

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10. *See* Elizabeth Killackey, *Kinship Foster Care*, 26 FAM. L.Q. 211, 218 (1992). Killackey explains why kinship care may not be the preferable care alternative for the child:

> Critics of kinship care suggest that the kinship care child will not be protected because of the kinship caretaker's connection to the abusive parent and because of the difficulty of monitoring a family situation. In addition to the traditional foster parent role conflict of parent versus professional, a kinship caregiver is also subject to the conflicts of divided loyalties between being kinship caregiver and family member related to the inadequate parent.

*Id.* The advantages include the ability to maintain a sense of identity with the family and to preserve the child's cultural background and values. *Id.*

the child like any other interested party. The Government presumably would welcome an application by a qualified relative, who could not only provide for the child's basic needs but also help preserve a child's sense of family identity.

Accordingly, appellant's proposed less drastic alternative would not constitute a "reasonable way[] to achieve those goals with a lesser burden on constitutionally protected activity." *Dunn v. Blumstein*, 405 U.S. at 343. There is, therefore, wisdom in the Legislature's decision not to tie the hands of DHS by mandating that a less permanent, potentially harmful biological link be preserved over a child's chance for stability. For these reasons, appellant's challenge to the statute for failure to mandate attempted placement with a relative fails.

**E. The Best Interests Standard**

Appellant argues that it is a due process violation not to consider the harm to her children in terminating her parental rights. She urges this court to follow the reasoning of *Alsager v. District Court*, 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976). The court in *Alsager* determined that to sustain its burden of showing a compelling interest, the government "must show that the consequences, in harm to the children, of allowing the parent-child relationship to continue are more severe than the consequences of termination." *Id.* at 23.

As explained above, we believe that the Legislature expressed a compelling interest in providing the child with a permanent home through its children's policy statement, codified at 5 V.I.C. § 2501. The Legislature structured the termination statute to require the court to find facts which show the inability of a parent to care for her child, the inability of the Department to improve the situation, and an elapsed period of time in which the child has been living outside the home. Consideration of these factors can be said to encapsulate an inquiry into the best interests of the child. *See generally In re Joyce T.*, 478 N.E.2d at 1313 ("[T]he best interests of the child are subsumed in the initial fact-finding determination as

to whether the child could be returned to its home in the foreseeable future."). While such a standard might not necessarily lead to the ideal outcome in every situation, there is nothing constitutionally infirm about the Legislature's decision that permanence is always a goal that is in the child's best interests.

### F. The Statute As Applied Did Not Deny Mrs. Stuart Her of Right To Substantive Due Process.

Appellant asserts that the Government did not have a compelling interest in terminating her parental rights, and that the Department should have explored a less drastic alternative before requesting that her parental rights be terminated. Specifically, she suggests, DHS should have continued parenting skills classes, looked into the possibility of transferring legal custody to a relative of Mrs. Stuart such as her mother, and permitted Mrs. Stuart to visit her children periodically. She concedes that her mother does not reside in the Virgin Islands.

Because the children need permanence, the Government had a compelling interest in making Mrs. Stuart's children available for adoption once it became clear that she would never be able to care for them or be their psychological parent. Mrs. Stuart first argues that the Government should have worked harder to train her to be a good parent by continuing parenting skills

classes. The testimony showed, however, that no amount of parenting skills training would have sufficed. Pursuit of such services would not have created permanence for the children. Therefore, termination without further attempts at futile parenting skills training could not have constituted a denial of her substantive due process rights.[11]

The Court acknowledges that the biological parent may provide the lifeline to one's family history and identity, which makes that relationship unique and special. Foster and adoptive parents will not compensate fully for the link that biological parents can provide to one's past. On the other hand, a child needs a strong, reliable, stable, and permanent relationship with an adult to allow and suggest the normal development and physical, emotional, intellectual, social, and moral growth.[12]

Should Mrs. Stuart's mother be available to adopt the children, she can apply to be considered, although appellant has presented no evidence suggesting that her mother has any such interest. Who may adopt the children, however, is an issue

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11. The Maryland Court of Appeals has held that where no amount of reunification services are likely to enable a biological parent to regain custody of her children, the department of social services "need not go through the motions in offering services doomed to failure." *In Re: Adoption/Guardianship No. 10941,* 1994 Md. LEXIS 75, at *28.

12. GOLDSTEIN, *supra* p. 16 at 31.

completely separate from whether Mrs. Stuart should be allowed to retain influence over decisions about her children's welfare. Because the state has a compelling interest in creating permanence for the children and termination of Mrs. Stuart's parental rights was necessary to achieve that goal, this substantive due process challenge to the statute as applied fails as well.

**VAGUENESS**

**A. The Standard**

"A statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of the due process of law." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

**B. The Statute**

In this case, the children had been removed from the home upon a previous court finding that the minors were "neglected" within the meaning of 5 V.I.C. § 2502(20). That section defines "neglect" as:

> the failure by those responsible for the care and maintenance of the child to provide the necessary support, maintenance, education as required by law; and medical or mental health

> care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.

Section 2502(1) defines "abandoned child" as:

> a child whose parents, guardian, or custodian desert him for such a length of time and under such circumstances as to show an intent to evade the duty of rearing him or a reckless disregard for his needs. It shall be a rebuttable presumption that the parent intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned.

Appellant contends that the neglect definition, and specifically the phrase, "to the extent that the child's health or welfare is harmed or threatened thereby," does not explain what quantum of harm would constitute sufficient grounds for termination. She asks, "at what point does the failure to provide necessary support, maintenance, etc., reach the requisite 'extent [to which] the child's health or welfare is harmed or threatened thereby'?" Brief for Appellant at 6. She further argues that no relevant case law fleshes out the concepts in the statute, and that a judge's decision could be affected by differing social, ethical and religious views. As a result, she

asserts, parents in the Virgin Islands are not provided with a constitutionally clear standard by which to guide their conduct.

Appellant misreads the statute. We construe the phrase "to the extent that the child's health or welfare is harmed" to refer only to a parent's failure to provide medical or mental health care. Appellant apparently overlooks the semicolon between "law" and "and," which separates two clauses of the subsection. To avoid an adjudication of neglect, the parent is required to provide support, maintenance, and education in accordance with law, referring to other territorial and federal laws which govern the responsibilities of parents. It is only the provision of medical and mental health care that is measured by "the extent that the child's health or welfare is harmed or threatened thereby." There is no vagueness problem in assessing a parent's conduct based on her compliance with other applicable laws.

The question still remains whether the language challenged by the appellant is unconstitutionally vague in the context of the medical and mental health care provision. When the Supreme Court has invalidated statutes on vagueness grounds, it has expressed concern about the absence of coherent standards and the corresponding danger of arbitrary and discriminatory enforcement of the law. *See, e.g., Grayned v. City of Rockford*, 408 U.S.

104, 108-09 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972).

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis . . . .

*Grayned v. City of Rockford*, 408 U.S. at 108-09. The Supreme Court has stated that when the language of a statute provides adequate warning of the conduct it condemns and prescribes boundaries sufficiently distinct for judges and juries to interpret and administer it uniformly, constitutional requirements are met fully. *United States v. Petrillo*, 332 U.S. 1 (1947); *see also Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983) (noting that the most important aspect of vagueness doctrine is imposition of guidelines that prohibit arbitrary, selective enforcement).

Although we have found no Supreme Court decision directly addressing the issue of vagueness in a child protection or

parental termination statute, other courts which have considered whether parental termination statutes are unconstitutionally vague have invalidated statutes which provided significantly less guidance than the instant one. The *Alsager* court found Iowa's parental termination statute unconstitutionally vague for allowing termination where the parent "substantially and continuously or repeatedly refused to give the child necessary parental care and protection," or for "conduct . . . detrimental to the physical or mental health or morals of the child." *Alsager v. District Court,* 406 F. Supp. at 14 & 19. The court determined that such language would "afford state officials with so much discretion in their interpretation and application that arbitrary and discriminatory parental terminations are inevitable." *Id.* at 18; *see also Davis v. Smith*, 583 S.W.2d 37, 42-44 (Ark. 1979) (finding lack of adequate judicial guidelines in statute allowing termination where parents were unable to provide "proper home" for children); *Roe v. Conn*, 417 F. Supp. at 780 (finding that statutory definition of neglect circular and couched in terms such as "unfit" and "improper" that have no common meaning).

We conclude that the standard set forth in the Virgin Islands parental termination statute cannot lead to arbitrary interpretations, adequately warns parents of what conduct is prohibited, and does not give judges and juries unbridled

discretion. Under 5 V.I.C. § 2502(20), a child will be found to be neglected if parents fail to comply with laws specifying their responsibilities for support, maintenance, and education. A child will also be found to be neglected if parents fail to get her medical or mental health services, and this failure results in harm or threat to the child's health. The words "threat" and "harm" have commonly recognized meanings. Such harm is readily measurable by doctors and understandable by individuals of ordinary intelligence. *See J.H. v. Bartholomew County Dep't of Pub. Welfare*, 468 N.E.2d 542, 547 (Ind. Ct. App. 1984) (finding that clarity and intent of statute was apparent where language allows state intervention if child's "physical or mental health is seriously endangered due to injury by the act or omission of his parent").[13]

Furthermore, appellant's contention that it is unclear whether "any harm, as subjectively determined by a Judge, however

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13. *See also* Richard P. Vornholt, Comment, *Application of the Vagueness Doctrine to Statutes Terminating Parental Rights*, 1980 DUKE L.J. 336, 348 (noting that the common meaning standard is used most often to assess vagueness challenges). *But cf. Government of the Virgin Islands v. Ayala*, No. 93-0114, slip op. at 4-9 (D.V.I. Dec. 6, 1993) (invalidating as unconstitutionally vague, a **criminal child abuse statute** which prohibits placing child in situation where it is "reasonably foreseeable that a child may suffer . . . mental or emotional injury".)

slight, [is] sufficient to sever parent-child bonds,"[14] fails to recognize that the finding of neglect is only one of several components necessary to terminate parental rights. Under the Family Division Procedures for the Territorial Court, a court must hold an adjudicatory hearing to determine whether the allegations of abuse or neglect averred in the petition are supported by clear and convincing evidence. 5 V.I.C. § 2548. Following such a determination, the court must hold a dispositional hearing in which further "relevant evidence, including oral and written reports, may be received and relied upon." *Id.* § 2549(a). The court may choose from a range of dispositional options, including permitting the child to remain in the home, with or without supervision by DHS, or transferring custody to another party. *Id.* Only if the child was removed from the home for more than six months, the Department has been unable through diligent efforts to ensure the safety of the child in the home, and the parent has not shown a good faith effort at rehabilitation can the court terminate parental rights. *Id.* § 2550. Because the court must weigh so many factors in its decision, and find neglect only upon clear and convincing evidence, it cannot be said that "any harm, . . . however slight,

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14. Brief for Appellant at 6.

[could be] sufficient to sever parent-child bonds" under this statutory scheme.

**C. As Applied to Appellant**

To support a claim of unconstitutional vagueness, a party challenging a statute is required to show that the statute is vague as applied to him. "When raising a claim of unconstitutional vagueness . . . the litigant must demonstrate that the statute under attack is vague as applied to his own conduct, regardless of its potentially vague application to others." *Aiello v. City of Wilmington*, 623 F.2d 845, 850 (3d Cir. 1980); *see also Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976) (declining to invalidate ordinances which were undeniably applicable to the respondents); *In re Hanks*, 553 A.2d 1171, 1176 (Del. 1989) (citing *Aiello* and upholding termination of parental rights statute which allows termination where parent failed to "plan adequately" for a child's needs and health, because such words were simple and nontechnical terms which are commonly used and understood).

Mrs. Stuart cannot assert seriously that the statute failed to warn her that her conduct would lead to termination of her parental rights. The conduct described in the record, attempting to drown a child in the sink, failure to provide food, and

maintaining a dangerously unsanitary living environment, is hardly behavior that would fall at the margins. Rather, such practices warrant a court's concern that the parent could not protect the children's safety. Therefore, Mrs. Stuart's standing even to assert a vagueness challenge is questionable. *See generally Parker v. Levy*, 417 U.S. 733, 756 (1974) (noting that one who has received fair warning of criminality of his conduct from a criminal statute may not challenge it for vagueness because its language might not give similar fair warning with respect to other conduct). Accordingly, we reject Mrs. Stuart's contentions that the statute is unconstitutionally vague and that its application to her denied her rights to due process under the Fourteenth Amendment.

**PROCEDURAL DUE PROCESS**

**A. Notice**

Mrs. Stuart claims she was denied due process of law because the notice of her termination proceeding was inadequate under the Fourteenth Amendment[15] to advise her of "the alleged factual basis for the proposed termination and a statement of the legal standard authorizing termination." *Alsager v. District Court*,

15. The Fourteenth Amendment is made applicable to this jurisdiction by section 3 of the Revised Organic Act, 48 U.S.C. § 1561.

406 F. Supp. at 24. She contends that because the Petition prepared by the Assistant Attorney General failed to meet the either the constitutional standards enumerated in *Alsager* or the standard set forth in section 2550, which requires "the filing of a written petition giving with particularity all factual and other allegations relied upon in asserting that parental rights should be terminated," the trial court's judgment should be reversed. The Court will first examine the constitutional sufficiency of the notice Mrs. Stuart received, and then determine whether a violation of Virgin Islands law severe enough to overturn the judgment occurred.

The substantive parts of the Petition read as follows:

> 1. Petitioner is duly authorized to proceed in this matter.
>
> 2. By Orders of this Court dated January 14, 1988, January 31, 1989 and March 2, 1989, and pursuant to Title 5 Virgin Islands Code, Section 2549, the temporary legal and physical custody of the above named minors was placed with the Department of Human Services on an emergency basis, and has been continued. The mother [,] JOAN STUART, has been committed to the St. Croix Hospital on several occasions on a 722.
>
> 3. On June 25, 1990, Joan Stuart was most recently admitted to the hospital on a 722.
>
> 4. Mrs. Joan Stuart continues to require hospitalization.
>
> 5. The Department of Human Services has made continuous, diligent, but unsuccessful

> efforts to reasonably insure that the minors, KEVIN, BRYANT, GERALD and CRAIG STUART and GLENDITA BARRETT, will not be subject to further abuse and neglect if returned home.
>
> WHEREFORE, Petitioner moves this Honorable Court for a Termination of Parental Rights . . . .

App. at 25-26.

**1. Constitutional Notice requirement**

The Supreme Court has found it beyond dispute that "state intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause." *Santosky v. Kramer*, 455 U.S. at 753 (citing *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981)). When a government agency, or a court, considers terminating or impairing an individual's life, liberty or property interest, the notice given must be designed to reasonably ensure that the interested parties in fact will learn of the proposed adjudicative action.[16] The fundamental concern of the due process notice requirement is that a party be

16. *See, e.g.*, *Greene v. Lindsey*, 456 U.S. 444 (1982) (holding that posting the notice of eviction action on door of apartment in public housing unit is insufficient to meet due process standard). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

informed when a proceeding which will affect her rights has been commenced. Mrs. Stuart here clearly was notified by the Petition that such a proceeding had been commenced. *See, e.g., Rubin v. Johns*, 22 V.I. 194, 199 (D.V.I. APP. 1986)(Appellate Division holding that judge's oral order to a defendant in open court setting the date for trial was sufficient to meet due process notice requirements, notwithstanding subsequent noncompliance by the clerk's office with the Procedures Manual of the Territorial Court). Therefore, this Court holds that the notice was constitutionally sufficient.

**2. Statutory Notice Requirement**

The Petition states that the children have been placed outside of the home pursuant to various court orders, that the mother had been, and continues to be, in need of hospitalization, and that the Department had made continuous, diligent but unsuccessful efforts to ensure that the children could return to the home. Although this language provided constitutionally adequate notice to appellant, it did not technically qualify as "a written petition giving with particularity all factual and other allegations relied upon." 5 V.I.C. § 2550(a).

We nevertheless do not find that Mrs. Stuart's rights to a fair hearing were prejudiced by this failure of specificity in

the petition.[17] We apply the harmless error standard in deciding whether to set aside a judgment. "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." FED. R. CIV. P. 61.[18] Mrs. Stuart received a full hearing, conducted by a neutral decision-maker, at which she was represented by counsel and had the opportunity to present and cross-examine witnesses. Furthermore, she earlier had participated in numerous court hearings when she was instructed about the progress she would need to make in order to regain custody of her children. Appellant therefore had ample warning of the allegations on which a termination action would be based. *See Helen W. v. Fairfax County Dep't of Human Dev.*, 407 S.E.2d 25, 29 (Va. Ct. App. 1991) (rejecting parents' claim that they did not have fair warning of requirements for them to retain custody of their daughter because numerous court orders during

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17. There is no excuse for, and we do not condone, such sloppiness by the Office of the Attorney General. Such failure to comply with Section 2550(a) in the future will risk reversal and the ordering of a new trial.

18. The rules governing the Territorial Court in effect at the time required the practice and procedure of that court to "conform as nearly as may be to that in the district court in like cases". Terr. Ct. R. 7; *see Investigations Unlimited v. All American Holding Corp.*, 16 V.I. 524 (Terr. Ct. 1979)(holding that although the Territorial Court is not a federal court, it must conform to the Federal Rules of Civil Procedure where there is no local rule to the contrary).

daughter's foster care placement directed parents to take specific actions necessary for her care). Accordingly, substantial justice does not require reversal of the trial court's judgment despite the omissions in the Petition.

**B. Termination Based On Mental Illness Was Not Error**

Appellant contends that the trial court erred in applying section 2550 to her because it makes no provision for terminating parental rights due to a parent's mental illness. She also argues that the failure to provide her the safeguards in the involuntary mental commitment procedures of 19 V.I.C. §§ 1135 & 1139 rendered termination of her parental rights fundamentally unfair and therefore unconstitutional.

**1. The Legislature did not exclude mentally ill parents from the scope of section 2550.**[19]

Appellant cites no statutory language that would suggest that the Virgin Islands Legislature intended to exclude mentally ill parents from application of the general parental rights termination provision. In fact, the sections of the Virgin

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19. A court must begin any statutory interpretation with the language itself and the presumption that legislative intent is expressed by the ordinary common sense meaning of the words used. *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *Territorial Court v. Richards*, 23 V.I. 285, 296, 673 F. Supp. 152, 160 (D.V.I. 1987)(as applied by the federal trial division of this Court).

Islands Code cited by appellant are the best evidence that, when the Legislature has sought to create special protections and procedures for the mentally ill, it has done so explicitly.[20] Had the Legislature intended for mentally ill parents to receive similar protections in the termination context, it would have written such requirements explicitly into the act. The plain language of the statute containing no terminological ambiguity or inherent contradiction, we find that 5 V.I.C. § 2550 was properly applied to Mrs. Stuart.

**2. Testimony of two doctors about the parent's mental health is not required.**

Appellant received a full hearing before a Territorial Court judge in which her counsel presented and cross-examined witnesses. She contends, however, that if her parental rights were to be terminated based on the allegation that she was mentally ill, then the standards should be similar to those involved in a civil mental commitment, wherein two physicians must examine the defendant and testify that the patient is of unsound mind and should be restrained. 19 V.I.C. §§ 1135 & 1139. To determine whether a constitutional violation has occurred, it is necessary to ask what process the Territory provided, and

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20. The procedures for restraining a mentally ill person set forth in 19 V.I.C. §§ 1135 and 1139, for example, require the evaluation of the person's sanity by two physicians and enumerate the questions to be covered by the inquiry.

whether it was constitutionally adequate. *Zinermon v. Burch*, 494 U.S. 113, 126 (1990).

While the Due Process Clause requires no fixed procedure, its fundamental requirement is an opportunity for a hearing and defense. *Mathews v. Eldridge*, 424 U.S. 319 (1976). To determine what procedures are necessary to comport with due process requirements, courts must use a balancing test. *Id.* The court must weigh:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

*Id.* at 335. This Court will analyze each of these elements in turn.

The private interest in the maintenance of a relationship with one's children is clearly fundamental. "If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs." *Santosky v. Kramer*, 455 U.S. at 753.

The risk of erroneous deprivation under the procedures provided by the parental rights statute is minimal, and the additional procedures of requiring two doctors to testify about the parent's mental health would not aid the trial court in its factfinding regarding the three factors it must find before ordering termination. Whether the children have been placed out of the home for more than six months is a determination the court can make without the aid of two physicians. The court must also assess whether DHS has made continuous, diligent but unsuccessful efforts to insure the child's safety in the home and whether the parent has made a good-faith and diligent effort at rehabilitation. The people who can best help the trial judge understand and evaluate a parent's efforts and abilities to care for her children are those who have observed her parenting or have discussed those responsibilities with her.

The court had before it the psychiatric testimony of Dr. Dalmas, who provided Mrs. Stuart's psychiatric history as well as his own evaluation of her ability to care for her children.

Additional independent mental evaluations would not help the judge weigh the testimony of other witnesses enough to significantly lessen the risk of an erroneous termination. The testimony of two doctors in every case would create a large expense for the state and delay final disposition for the

children while serving little value. The Government's interest in creating a stable and permanent environment has already been discussed.[21] The added cost in time and money by requiring the use of two physicians in every case is not warranted by the minimal assistance they could provide to the Court in its decision-making. Consequently, the addition of these safeguards is not required by the Fourteenth Amendment's guarantee of procedural due process.

**SUFFICIENCY OF THE EVIDENCE**

Mrs. Stuart challenges the Territorial Court's judgment, claiming that the decision to terminate her parental rights was not supported by clear and convincing evidence, as required by statute and Supreme Court caselaw. 5 V.I.C. § 2550(b); *Santosky v. Kramer*, 455 U.S. at 767-68. Appellant argues that the Government did not offer sufficient proof that the Department of Human Services made "continuous diligent, but unsuccessful efforts to insure that the children would not be subject to further . . . neglect if returned home." She further contends that the evidence produced at trial did not show the lack of "a good faith and diligent effort at rehabilitation" required to terminate her parental rights. This Court may overturn the trial

21. See text *supra* p. 16-21.

court's finding of clear and convincing evidence only if we determine that such a finding was clearly erroneous. FED. R. CIV. P. 52. Because the record reflects ample evidence to support the trial court's finding that DHS made continuous, diligent, but unsuccessful efforts to insure the children's safety in the home, and Mrs. Stuart had not made good faith and diligent efforts at rehabilitation, the finding was not clearly erroneous and we must affirm. *See Christian v. Joseph,* 23 V.I. 193, 198 (D.V.I. APP. 1987)(quoting *United States v. Gypson Co.*, 333 U.S. 364, 395 (1948)).

**A. Continuous and Diligent Efforts by DHS**

In support of her claim that the Department's efforts were not diligent, appellant argues that the parenting classes she attended were cancelled due to lack of funding, that the DHS worker could have been more attentive if the worker had been provided with a government vehicle, and that the Government should have provided nursing care to help appellant function normally. She argues that DHS's failure to provide such services evidences the agency's lack of diligent effort.

To support its claim that the Department did make diligent efforts, the Government presented the testimony and

documentary evidence previously described in this opinion.[22] In addition, case manager Ada-Luz Rivera visited Mrs. Stuart or saw her at the office once every two weeks. She worked with appellant from 1988 until the time of the proceeding, with the exception of periods when she was hospitalized. App. at 35-36, 38. Rivera provided counselling and also arranged for homemaking services for her client. App. at 32. Parenting classes were provided to Mrs. Stuart until they were cancelled because the Department was unable to find an instructor.

The Department also provided appellant with the services of a homemaker from January, 1990 until the time of the instant litigation. Gaskil, the homemaker, testified that despite her efforts to teach Mrs. Stuart how to maintain her home and her personal hygiene, appellant continued to keep her home in an unsanitary condition. The homemaker described garbage hanging from the doorknobs, underwear thrown about the rooms, and food, cleaning supplies and dirty laundry all on the bed at one time. App. at 65-68. Gaskil testified that she visited as often as three times per week, and had to encourage Mrs. Stuart to shower and to clean the house. App. at 67. Gaskil described that appellant simply did not learn to do these tasks on her own. It was only with help and repeated prompting that appellant was

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22. *See* text *supra* p. 3-10.

willing to clean her home, and even then she sometimes would not cooperate. App. at 70.

"Continuous," in its normally understood sense, means "extended or prolonged without interruption or cessation." THE AMERICAN HERITAGE DICTIONARY 288 (6th ed. 1976). The evidence of record suggests that for a period of five years, DHS provided various services to Mrs. Stuart, including regular bimonthly visits from Ms. Rivera spanning that entire time, with the exception of her periods of hospitalization. This was clearly sufficient for the trial court to find that DHS made continuous efforts.

"Diligent," is defined as "industrious; done with persevering, painstaking effort." *Id.* at 369. Descriptions such as those of Ms. Gaskil, who tried to help Mrs. Stuart clean when she had dumped all her clean and dirty clothes, food and soap, all on the bed together, reflect persevering efforts by the Department. Furthermore, as the trial judge noted, the Department made efforts to return one of the children, Craig Stuart, to the home at the time Glendita was born, only to find that both children were subject to neglect, and perhaps abuse. App. at 127 (Judgment and Order dated April 5, 1991 at 2).

**B. Appellant's Effort at Rehabilitation**

To support her claim that there was no evidence that suggested she had stopped trying to be a good parent, appellant refers to her visits with her children and attendance at parenting classes while the children were in placement. However, the record reflects that Mrs. Stuart's visits became few and far between. In 1990, she visited her children only six times for a total of fewer than five hours. As described earlier, on one visit, she upset the children by asking them troubling questions and allowing her companion to yell at Kelvin. During other visits, she yelled and stole from the Children's Home. While Mrs. Stuart's inability to recover from her mental illness contributed to her inability to care for her children, the testimony shows that a large part of the problem was her failure diligently to take her medication to help her function more normally. This failure, combined with her nonresponsiveness to the homemaking services and the irregular and turbulent course of her visits to the children, are sufficient evidence to support the trial court's finding of a lack of good faith and diligent efforts at rehabilitation.

**CONCLUSION**

The decision to terminate a parent's right to the care and custody of her children is among the most severe deprivations of

liberty a court is given the responsibility to determine. The examination of such a decision is not a task this Court undertakes lightly. Although appellant has raised a number of challenging issues, none of her arguments is sufficient to warrant overturning the trial court's decision to terminate her parental rights. Accordingly, the Territorial Court's decision is affirmed. An appropriate order will be entered.

**FOR THE COURT:**

_____/s/_____
**THOMAS K. MOORE**
**CHIEF JUDGE**

**DATED**: January 31, 1995